

Decision 05-03-011 March 17, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rik Wayne Munson,

Complainant,

v.

Pacific Bell Telephone Company d/b/a SBC
California,

Defendant.

(ECP)
Case 04-07-007
(Filed July 7, 2004)

OPINION GRANTING RELIEF REQUESTED

I. Summary

Today's decision grants the request of Rik Wayne Munson (Complainant) that SBC California (SBC) credit his telephone account \$1,044.00 for disputed local toll charges incurred accessing his Internet Service Provider (ISP). This proceeding is closed.

II. Procedural Summary

SBC's answer to the complaint was filed July 29, 2004. A hearing was held on August 18, 2004. Pursuant to a ruling by the assigned Administrative Law Judge, following submission of written statements and exhibits to supplement the record, this matter was submitted for decision on November 12, 2004.

III. Positions of the Parties

Complainant disputes charges for direct dialed local toll calls made from his two telephone lines to his ISP. The toll calls began on July 29, 2003, from his primary line and continued until July 31, 2003, when the toll calls immediately switched to his secondary line and continued until August 8, 2003. On that date, SBC issued a "Special Advanced Toll Bill" or notice of excessive charges. Complainant says that on receipt of the notice, he reviewed his computer configurations to verify that his two computers were not configured to automatically dial the toll number to his ISP (707-466-0046), and he then called SBC's customer service to dispute the charges.

Complainant considers it significant that the toll calls stopped on the date that SBC issued its notice, which he notes was several days prior to his receiving it. Complainant states that he is a network communications specialist certified by Microsoft as a systems engineer, he does not use third-party software provided by the ISP to access the Internet, he configured his computers to dial the non-toll number (707-749-0046) and has been using that number for years.

SBC's position is that the toll number in question was directly dialed from Complainant's telephone line and he is responsible for payment of the disputed charges in the amount of \$1,044.00 currently impounded with the Commission. SBC states that customers are billed based on the digits the customer or customer's computer dials and not on how the call is routed. Any rerouting or forwarding of calls that may take place in the ISP's network would not affect the billing record generated in the originating SBC Central Office. According to SBC, once the switching equipment serving the customer routes the call to an outgoing facility, there is no way for SBC to know whether the outgoing facility has routed the call to the number dialed or to another number.

Further, SBC states that its Central Office can only recognize that a call has been originated from the customer's line to a dialed number. SBC's billings are based on the recordings made by the originating switching equipment, and since the originating switching equipment uses the prefix of the number dialed by the customer, the billing records and the charges billed to the customer will always reflect the number dialed by the customer. The Central Office does not differentiate between an ISP call and a voice call from a residential phone line. According to SBC, if the ISP chooses to "reroute" the call to another access point, the reroute is invisible to SBC's Central Office since this would take place in the ISP network or the network of another local exchange carrier, not SBC's network.

IV. Discussion

Both parties have presented strong arguments to support their respective positions. However, we find Complainant was credible in his testimony that his computers were not programmed to dial the disputed toll calls to access his ISP. Furthermore, we find that the problem experienced by Complainant is not unique, and the Commission has received numerous similar complaints. Because both the phone companies and the ISPs are the entities that stand to benefit when a customer is billed for a local toll call instead of a local call when accessing his or her ISP, the Commission believes the responsibility for remedying the situation lies with the phone companies and the ISPs. They are the beneficiaries of the customers' dollars for dial-up Internet access. Individual customers that the Commission finds to be credible in terms of whether they correctly programmed their computers to dial local numbers should not be held responsible for this situation, which appears to be beyond their ability to control or prevent. Accordingly, we reject SBC's argument that Complainant should be

required to pay for the local toll calls in dispute, where we have found it credible that Complainant took all reasonable steps to avoid dialing a local toll number.

Lastly, we note that SBC did notify Complainant that his toll charges had reached an unusual level. We believe that such customer warning notices are a step in the right direction. However, SBC should have attempted to resolve this complaint with a one-time credit to the customer, as it did in its trial program for customers who experienced toll charges as a result of accessing their ISP. (See Opinion Approving Settlement Intended to Reduce Dial-up Internet Toll Charges, Decision 04-07-052, p. 5.)

V. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

O R D E R

IT IS ORDERED that:

1. SBC California shall credit the account of Rik Wayne Munson (Complainant) \$1,044.00 for disputed local toll calls charged to his account between July 29 and August 8, 2003.
2. The amount of \$1,044.00 currently impounded with the Commission shall be disbursed to Complainant.
3. Case 04-07-007 is closed.

This order is effective today.

Dated March 17, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN

SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners